



What You Need to Know About Post-Employment

DSCP Ethics Training 2004

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Topics for Discussion

- Planning for post-employment
- Negotiating for employment
- Post-employment restrictions
- Procurement Integrity restrictions
- VSIP repayment penalty
- Re-employment with Government



Plan Now

- What you do not know can hurt you
- Planning allows you to choose the optimal time for you to make important decisions
- Plan for contingencies
- Things change – revisit your plan



Get Started

- Gather information from official sources
- Do not rely on hearsay and rumor
- Check out all sources
- Web sites vary as to reliability
- Consider post-employment counseling as part of your retirement planning



Stay Focused and Remember

- Web sites and experts make mistakes
- Statutes / regulations prevail over opinions
- Erroneous advice cannot create estoppel against Government (OPM v. Richmond)
- You **can** rely on ethics opinion issued by Ethics Counsel – 5 CFR 2635.107



Looking for Work – 18 USC 208

- You may “negotiate for employment” while still employed for the Government, but
- You must disqualify yourself in writing in certain situations – not optional
- Not all employment contacts are covered by this requirement
- You may accept reimbursement for interview trips from prospective employer



What is Negotiating

- Discussing or communicating with another person or an agent with the goal of reaching an agreement for employment
- May include general discussions only – does not have to be a specific discussion
- Includes a response other than a outright rejection to an unsolicited offer (“let me think about it” test)



What is Not Negotiating

- Employee's unsolicited communication for the sole purpose of requesting a job application (“are you hiring” test)
- Sending out resumes to industry segments
- Unequivocal rejection of an unsolicited job offer




No Longer Negotiating

- Rejecting an offer of employment (“Sorry, I am not interested” test)
- Termination of employment discussions
- Two months have lapsed since resume sent to company and no response
- Any prior disqualification may be rescinded



Post-Employment Restrictions

- 18 U.S.C. Section 207
- Multi-tiered restrictions
- Restrictions generally apply to “representational activities”
- Generally allows former employee to work “behind the scenes”



Section 207(a)

- Applies to “particular matters” involving “specific parties” with the intent to “influence” the Government (any part)
- Applies if former employee was involved “personally and substantially”
- Ban lasts for the lifetime of the matter
- Fact specific – hard to generalize




Supervisory Restriction

- Applies to former supervisors if the particular matter was under their supervisory responsibilities
- Supervisory restriction lasts for 2 years
- Allows former employee to work “behind the scenes”



207 Violations

- Criminal penalties for knowing violations
- Civil penalties and fines
- Administrative penalties
- Could impact your new job



Procurement Integrity “Compensation Ban”

- One-year ban on accepting compensation from companies that received a contract if award amount greater than \$10 million (41 USC 423)
- Applies to PCO, ACO, SSA, SSEB member, Chief of Financial / Technical Evaluation Team, Program Manager, Deputy PM, and certain decision makers
- Exception for affiliates or divisions



Reporting Job Contacts While Working on Acquisition

- Agency official participating personally & substantially in an acquisition over the SAT
- Official must report all employment contacts with bidders / offerors
- Reports must be in writing and sent to the supervisor and the ethics official
- Official must either reject offer or recuse



Violations

- Employee who violates either the job offer reporting requirement or the post-employment compensation ban is subject to civil and administrative sanctions
- Company that provides unlawful compensation to a former employee is subject to civil and administrative sanctions



VSIP

- Voluntary Separation Incentive Pay
- New DoD policy on VSIP / VERA
- DoD now has permanent VSIP authority
- VSIP usually \$25,000 (gross amount)
- Deductions for federal, state, local taxes
- There are restrictions on VSIPs: number of VSIPs & categories of eligible employees



VSIP Repayment Penalty

- Repayment penalty if former employee returns to Government employment or works thru personal services contract within 5 years after receiving VSIP
- Penalty is repaying gross amount
- Government may waive this penalty (hint: get the waiver in writing before returning to work)



Government Re-employment

- New DoD Policy (effective for rehires after 11/23/03) based on DoD Authorization Act
- Allows rehiring of retirees for critical positions without reducing the retirees' salary by the amount of their annuity
- Restrictions apply – and VSIP repayment penalty applies unless waived by DoD



The Last Word

- Plan ahead
- Know your rights – don't walk out the door until you know what you can and cannot do
- Read the fine print – and ask questions
- Consult with Ethics Counsel **before** you leave (215) 737-7179